

# Background on 9/11 Health and Compensation Issues and the need for H.R. 3543, the Maloney-Nadler-Fossella 9/11 Health and Compensation Act

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Updated April 23, 2008

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## I. Executive Summary

Thousands of people died on September 11, 2001 during the largest terrorist attacks our nation has seen. Yet thousands more – including first responders, area residents, workers, and students - are sick and getting sicker from exposure to the cocktail of toxins released from the collapse of the World Trade Center Towers. Numerous studies have documented the health effects of the WTC attacks which include lower and upper respiratory, gastrointestinal, and mental health conditions. These illnesses have caused major financial strains on many of those exposed who are subsequently no longer able to work and face the high price of health care without a federally-funded national program to incur the costs. The federal government has an obligation to help the heroes of 9/11 and all others exposed, and failure to do so may have long-lasting implications on future response efforts.

*H.R. 3543, the Maloney-Nadler-Fossella 9/11 Health and Compensation Act* is a bipartisan bill that would provide the heroes and heroines of 9/11 with the security and assistance they desperately need and deserve. It would ensure that every American at risk of illness from exposure to the Ground Zero toxins has a right to be medically monitored and all who are sick as a result have a right to treatment. The bill builds on the expertise of the Centers of Excellence, which are currently providing high-quality care to thousands of responders and ensuring ongoing data collection and analysis. It would also expand care to the entire exposed community, which includes residents, area workers and school children as well as the thousands of people from across the country who assisted with the recovery and clean-up effort. Lastly, H.R. 3543 would provide compensation for loss by reopening the 9/11 Victim Compensation Fund, a federal program to compensate victims of the September 11 attacks.

While the existing treatment and monitoring programs which the bill builds upon have helped thousands of Americans, they cannot be adequately sustained or expanded without federal legislation. The grants that fund the World Trade Center Medical Monitoring and Treatment Program, which has 50,300 responders enrolled, is set to expire on June 1, 2009. The two programs that serve exposed populations outside of the New York metropolitan area—the Association of Environmental and Occupation Clinics (AOEC) 9/11 program and the Mt. Sinai School of Medicine contract program with QTC Management—are expected to run out of money in May 2008 and June 2008 respectively.

The legislation would ensure not only the existence of a national program but consistent funding as well. Currently, funding for 9/11 health programs are funded through the year-to-year appropriations process, not through mandatory spending. With NIOSH estimating \$218 million per year needed to continue the existing programs which are already overextended, expanding the program to meet growing numbers and needs is a challenge. Fortunately, the New York Delegation has been able to secure \$335 million in federal funding since 2002 to address 9/11 health concerns.

In addition to addressing health care needs, the bill would reopen the Victims Compensation Fund (VCF). Congress created the VCF in the immediate aftermath of the

September 11<sup>th</sup> terrorist attacks to provide aid to the families of 9/11 victims and to individuals who suffered personal injury. In return for accepting these funds, recipients relinquished rights to any future litigation. Close to 100% of the families who lost loved ones had filed with the fund at the December 22, 2003 application deadline. However, many of those who suffered personal injury had not, mainly due to lack of awareness of the fund or of their illness. There are potentially thousands of individuals who are just now developing career-ending injuries but are not eligible to receive assistance because they developed their symptoms after the deadline. The *Maloney-Nadler-Fossella 9/11 Health and Compensation Act* would ensure fair compensation for those in need.

## II. Introduction

Following the terrorist attacks of 9/11 and the subsequent collapse of the World Trade Center Towers, hundreds of thousands of people—including responders, area residents, workers, and students—were exposed to toxins, pulverized building materials, and other environmental contaminants.

Despite the well-documented release of Ground Zero toxins and a considerable body of peer-reviewed research on the negative health effects, access to proper medical monitoring and treatment among the exposed populations has been limited or uncoordinated, leaving many with unmet health needs. A number of compensation and liability issues are also closely related to the negative health effects.

This memo covers federal issues related to 9/11 health effects and compensation matters, including current federally funded monitoring and treatment programs for responders, Congressional actions, cost estimates, federal funding history, the September 11 Victim Compensation Fund, and the WTC Captive Insurance Company.

Six and a half years after 9/11/01, Rep. Maloney and the New York Delegation continue to advocate for medical monitoring for everyone who was exposed to the Ground Zero toxins, medical treatment for anyone who is sick as a direct result, and economic compensation for their losses. Comprehensive legislation to achieve this goal, H.R. 3543, the 9/11 Health and Compensation Act, was introduced by Reps. Maloney, Nadler and Fossella in September 2007.

Visit Congresswoman Maloney's website to access full text and summaries of H.R. 3543, the 9/11 Health and Compensation Act:

[http://maloney.house.gov/index.php?option=com\\_issues&task=view\\_issue\\_leg&issue=22&Itemid=35](http://maloney.house.gov/index.php?option=com_issues&task=view_issue_leg&issue=22&Itemid=35)

The bill is strongly supported by:

- the AFL-CIO
- American Federation of State, County, and Municipal Employees (AFSCME)
- Community Board One
- City of New York Council of School Supervisors and Administrators of New York City
- District Council 37 of AFSCME
- International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
- Laborers' International Union of North America (LIUNA)
- Mayor Michael Bloomberg of the City of New York
- Sergeants Benevolent Association of New York City
- Uniformed EMT's and Paramedic's of the New York City Fire Department
- World Trade Center Rescuers Foundation
- The entire bipartisan New York Congressional Delegation.

### III. 9/11 Health Issues

#### A. Failed “National Programs” and Far-Reaching Repercussions

In a July 2007 Government and Accountability Office (GAO) report entitled, *September 11: HHS Needs to Ensure the Availability of Health Screening and Monitoring of All Responders*, the Congressional watchdog group found that the Department of Health and Human Services (HHS) has not ensured the availability of services for responders living outside of the NYC Metropolitan area. Three initial attempts to do so have failed.

Most recently, HHS issued Requests for Contracts in October 2007 to establish a World Trade Center Processing Center which would serve as the first national program to coordinate the medical treatment and monitoring as well as pharmaceutical needs for the first responders who came from *every state in the country* to assist in the rescue and recovery efforts of the 9/11 terrorist attacks. However, in December 2007, right before the deadline for proposals, HHS halted the program citing insufficient funds and “bidder confusion.” Yet within days, Congress appropriated \$108 million dollars (in addition to \$50 million allocated earlier in the year) to 9/11 health care and one potential bidder has publicly stated that not only were they not confused, but they were ready and willing to submit a bid.

The Requests for Contracts was especially important as the two programs that currently serve exposed populations outside of the New York metropolitan area—the Association of Occupational and Environmental Clinics (AOEC) 9/11 program and the Mt. Sinai School of Medicine contract program with QTC Management—are expected to run out of money in May 2008 and June 2008 respectively. If action is not taken thousands of people throughout the country who are medically monitored and treated by the Association of Environmental and Occupational Clinics (AOEC) 9/11 program and Mt. Sinai School of Medicine contract program with QTC Management will be denied the care they need and deserve.

The Association of Environmental and Occupational Clinics (AOEC) 9/11 program is funded by the American Red Cross and expects to have exhausted its resources by May 2008. AOEC is vital to many of those living outside of the New York Metropolitan area who were exposed to the toxins of September 11 as they can visit an AOEC clinic and a doctor who is familiar with September 11 health issues near their home.

The Mt. Sinai School of Medicine (MSSM) predicts its contract program with QTC Management Inc. will expire in June 2008 unless a new proposal for a national program is implemented. QTC works with MSSM to administer medical monitoring services for 9/11 first responders living outside of the New York area utilizing the school’s expansive provider network.

On January 22, 2008, the House Oversight Subcommittee on Government Management, Organization, and Procurement of the Oversight and Government Reform Committee held a field hearing in lower Manhattan to investigate the cancellation of the call for proposals for the national program. Neither Secretary of HHS Leavitt nor a representative from HHS attended the hearing despite requests from subcommittee chairman Edolphus Towns to testify.

The day after the hearing, Chairman Towns sent a letter to Secretary Leavitt soliciting all documents pertaining to the cancellation of the Requests for Contracts and implementation of the recommendations in the aforementioned GAO report to be submitted to Congress by February 8, 2008. HHS failed to respond to the July report within 60 days of receiving it as mandated by US code.

Read Chairman Towns' letter to Secretary Leavitt:

<http://maloney.house.gov/documents/911recovery/20080123LeavittInformation.pdf>

Read a summary of the GAO report and access the full text here:

[http://maloney.house.gov/documents/911recovery/20070724\\_SummaryofGAOReport.pdf](http://maloney.house.gov/documents/911recovery/20070724_SummaryofGAOReport.pdf)

On April 4, 2008, the Centers for Disease Control and Prevention issued a Request for Proposals to replace the two current programs with a new program that aims to serve the estimated total 5,000 to 10,000 of WTC responders who live outside the metropolitan New York City area

## **B. Current Federally Funded Medical Monitoring and Treatment Programs**

Presently, there are two major federally funded National Institute for Occupational Safety and Health (NIOSH)-administered programs that provide medical monitoring and treatment to first-responders and others who participated in the WTC rescue, recovery and clean-up operations: The New York City Fire Department Bureau of Health Services World Trade Center Medical Monitoring and Treatment Program ("FDNY Monitoring and Treatment Program") and The World Trade Center Medical Monitoring and Treatment Program led by Mt. Sinai ("The Consortium").

According to planning documents from the Department of Health and Human Services, every month another 500-1,000 responders sign up for health monitoring, and many of those new registrants require treatment. As of March 31, 2007, nearly 37,000 responders are being medically monitored, more than 6,500 people are being treated for 9/11-related health problems, and more than 4,500 have been referred for mental health care, often for conditions like Post Traumatic Stress Disorder (PTSD). In general, the number of ailing 9/11 rescue and recovery workers is increasing, workers' illnesses are becoming more severe, the projected cost of treating these illnesses is surging. At the same time, current federal treatment funding levels are quickly depleting and HHS' recent cancellation of a mechanism that would coordinate the first national program to medically monitor and treat all those who were exposed to the toxins of 9/11 has threatened the continuation of these and other vital programs.

See HHS's planning document here:

[http://maloney.house.gov/documents/911recovery/20070615\\_WTC\\_Medical\\_Monitoringand\\_Treatment\\_Program.pdf](http://maloney.house.gov/documents/911recovery/20070615_WTC_Medical_Monitoringand_Treatment_Program.pdf)

### *i. The FDNY Monitoring and Treatment Program*

The FDNY Monitoring and Treatment Program monitors and treats firefighters, emergency medical technicians, paramedics, officers and FDNY retirees who responded to the WTC disaster



and participated in rescue, recovery and clean-up operations. As of March 31, 2007, federal funding was helping to monitor over 14,000 firefighters. Overall at least 16,200 individuals are active participants, and since this number accounts for about 94% of all eligible firefighters, the population is not expected to grow substantially. Because FDNY requires all members to undergo pre-employment medical evaluations and regularly scheduled annual visits, the program is a source of crucial pre-exposure baseline data to help develop a more complete understanding of the long-term health effects in responders. The program is supported by federal grants from National Institute for Occupational Safety and Health (NIOSH).

See <http://www.nyc.gov/html/fdny/html/units/bhs/wtcmm/index.shtml> and “World Trade Center Health Impacts on FDNY Responders: A Six Year Assessment September 2001-September 2007”: [http://www.nyc.gov/html/fdny/html/publications/wtc\\_assessments/2007/wtc\\_2007.shtml](http://www.nyc.gov/html/fdny/html/publications/wtc_assessments/2007/wtc_2007.shtml)

*ii. The WTC Medical Monitoring and Treatment Program at Mt. Sinai (“The Consortium”)*

The WTC Medical Monitoring and Treatment Program at Mt. Sinai Hospital is a consortium of five NYC-area clinical centers that provides standardized medical monitoring, referral, and treatment for workers and volunteers who provided rescue, recovery, demolition, debris removal and related support services in the aftermath of the attacks on the World Trade Center. Participating clinical centers are at Mt. Sinai, Queens College, SUNY Stony Brook, University of Medicine and Dentistry of New Jersey (UMDNJ), and Bellevue Hospital. As of March 31, 2007, federal funding was helping to provide services for more than 19,500 workers and volunteers; however, that number is expected to rise significantly as potential participants experience new or worsened health problems that may be related to 9/11, and as outreach efforts and press reports inform individuals of their eligibility. The Consortium is also currently supported by grants from NIOSH, as well as quickly dwindling American Red Cross funding.

See <http://www.wtcexams.org/> and <http://www.wtcexams.org/programinformation.html> for more information.

It is important to note that the FDNY Program and the Consortium use comparable data collection standards and treatment guidelines, allowing for comparison and data aggregation for research purposes.

*iii. WTC Federal Responder Medical Program*

Federal workers have explicitly been barred from obtaining services from the Consortium. Instead, the approximately 10,000 federal workers who were at Ground Zero have been eligible for a federally funded, HHS-administered WTC Responder Screening Program which provides a one-time screen, but not medical monitoring or treatment. The GAO has testified at hearings in the National Security Subcommittee of the House Oversight and Government Reform Committee about the WTC Federal Responder Medical Program, stating that it has “accomplished little” and lags behind other federally funded monitoring and treatment programs. Most recently, GAO has reported that HHS has not ensured the uninterrupted availability of screening services and is not designed to provide monitoring for federal worker 9/11 responders.

In the near future, however, federal workers and retirees will be allowed to participate in the WTC Monitoring and Treatment Program.

Read a summary of the GAO report and access the full text here:

[http://maloney.house.gov/documents/911recovery/20070724\\_SummaryofGAOReport.pdf](http://maloney.house.gov/documents/911recovery/20070724_SummaryofGAOReport.pdf)

#### *iv. World Trade Center Health Registry*

In 2003, the New York City Department of Health and Mental Hygiene created the WTC Health Registry with funding from the Centers for Disease Control and Prevention's Agency for Toxic Substances and Disease Registry - a division of HHS. The WTC Health Registry gathers information about the physical and mental health status of registrants who were exposed to environmental contaminants for up to 20 years through regular health surveys and detailed studies. Enrollees answered an initial 30-minute telephone survey about where they were on September 11, 2001, and they were asked to report the status of their health. This information allows health professionals to compare the health of enrollees with the health of the general population. There is no medical monitoring or treatment provided by the Registry.

Of the estimated 410,000 individuals who met the Registry's exposure criteria, more than 71,000 have people enrolled.

Read more on the WTC Health Registry: <http://www.nyc.gov/html/doh/html/wtc/index.html>

#### *v. Other Programs*

There are two federally funded programs that provide mental health services to police officers: Project COPE and POPPA (Police Organizations Providing Peer Assistance). These programs are significantly smaller in size and scope than the programs mentioned above.

#### *vi. Coordination (Department of Health and Human Services)*

In February 2006, Dr. John Howard, Director of the National Institute for Occupational Health of the Centers for Disease Control and Prevention subdivision of the Department of Health and Human Services was appointed to serve as the federal government's coordinator to oversee the response to Ground Zero health impacts. In September 2006, Secretary Leavitt announced the creation of a new high-level task force to advise on federal policies and funding issues related to responder WTC-associated health conditions based on scientific data and other relevant information. The WTC Task Force was chaired by Assistant Secretary of Health Dr. John Agwunobi. Dr. John Howard served as the lead scientific advisor on the task force and coordinated federal, state, local and private partners in their implementation of monitoring and treatment. The taskforce briefed Secretary Leavitt on their internal recommendations on April 3, 2007, which have yet to be made public. However, on August 7, 2007, Dr. Agwunobi announced his resignation as Assistant Secretary of Health, effective September 4, 2007. He joined Wal-Mart as Senior Vice President and President for the Professional Services Division.

To date, it is unknown when or whether Secretary Leavitt will appoint a new Chair for the WTC Taskforce, or who that new Chair might be.

In addition, HHS maintains a website with World Trade Center Health Resources, <http://hhs.gov/wtc/>, including a section with Scientific Reports published about health effects of 9/11, <http://hhs.gov/wtc/reports/>.

*vii. Exposed Populations not currently benefiting from Federal Funding*

There is currently no federal program for medical monitoring and treatment of area residents, office workers, school children or any other exposed population outside of responders.

In September 2006, the City of New York established the WTC Environmental Health Center at Bellevue Hospital to provide comprehensive physical and mental health treatment to all individuals with suspected WTC-related health problems. The program absorbed a pre-existing WTC-related program that was started in 2005 with a grant from the American Red Cross. In September 2007, the Center was expanded to two additional locations at Gouverneur Healthcare Services in Lower Manhattan and Elmhurst Hospital Center in Queens.

In 2007, the New York delegation successfully worked to secure \$158 million – including \$50 million in emergency funding- in FY2008 toward 9/11 health care programs. \$52 million of that sum is attached with language to expand care to area residents, students, and other non-responders exposed to the cocktail of toxins September 11. HHS has not implemented these programs at this time. With existing programs quickly running out of funds, the enactment of the FY2008 9/11 appropriations is more important than ever.

### **C. Congressional Actions other than Appropriations**

*i. Hearings*

Prior to September 2007, the House of Representatives had held six hearings on the issue, each in subcommittees of the Oversight and Government Reform Committee. The Senate Health, Education, Labor and Pensions Committee has held one hearing on the issue. GAO has testified at four of the House hearings and has recently released a fifth report. See all five GAO Reports on 9/11 Health (including abstracts):

[http://maloney.house.gov/index.php?option=com\\_content&task=view&id=1405](http://maloney.house.gov/index.php?option=com_content&task=view&id=1405)

In 2007, five hearings were held in five separate committees:

- 1) House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties (6/25) “Substantive Due Process Violations Arising From the Environmental Protection Agency’s Handling of Air Quality Issues Following the Terrorist Attacks of September 11, 2001”
- 2) House Oversight and Government Reform Subcommittee on Government Management, Organization and Procurement (9/10) “9/11 Health Effects: The Screening and Monitoring of First Responders”

- 3) House Energy and Commerce Subcommittee on Health (9/11, 10:00am) “Answering the Call: Medical Monitoring and Treatment of 9/11 Health Effects”
- 4) House Committee on Education and Labor (9/12) “9/11 Hearing on Why Workers Weren't Protected”
- 5) House Committee on Homeland Security (9/14) “Protecting the Protectors: Ensuring the Health and Safety of our First Responders in the Wake of Catastrophic Disasters”

Three hearings have already been held in 2008:

- 1) House Oversight and Government Reform Subcommittee on Government Management, Organization and Procurement (01/22) “9/11 Health: Why Did HHS Cancel Contracts to Manage Responder Health Care?”
- 2) House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies Hearing (03/12) “World Trade Center 9/11 Health Monitoring and Treatment Program”
- 3) House Judiciary Subcommittees on the Constitution and Immigration Joint Hearing (4/1) “Paying with their Lives: The Status of Compensation for 9/11 Health Effects”

More information on all of the federal hearings, including testimony, are available in Appendix B of this document as well as on Rep. Maloney’s website:

[http://maloney.house.gov/index.php?option=com\\_content&task=view&id=1189](http://maloney.house.gov/index.php?option=com_content&task=view&id=1189)

## *ii. Federal Legislation*

On September 17, 2007, Reps. Maloney, Nadler and Fossella introduced new legislation in the House, the *9/11 Health and Compensation Act* (H.R. 3543), with strong support from the AFL-CIO, the Laborers International Union of North America (LIUNA), the Mayor of the City of New York, the Governor of the State of New York, and others.

In general, the new legislation will:

- Ensure that everyone exposed to the Ground Zero toxins has a right to be medically monitored and all who are sick as a result of exposure have a right to treatment;
- Build on the expertise of the Centers of Excellence, which are currently providing high-quality care to thousands of responders and ensuring on-going data collection and analysis;
- Expand care to the entire exposed community, which includes residents, area workers and school children as well as the thousands of people from across the country who assisted with the recovery and clean-up effort; and
- Provide compensation for economic damages and loss by reopening the 9/11 Victim Compensation Fund.

As drafted, funding for the bill will not be subject to yearly Congressional appropriations battles, but rather will be mandatory spending.

Read a more detailed summary of the bill as prepared by the Congressional Research Service:  
<http://maloney.house.gov/documents/911recovery/200710CRSSectionbySectionSummaryofHR3543.pdf>

See bill status and current cosponsors:

<http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.03543>:

On January 8, 2007, Sen. Clinton along with Sens. Schumer, Menendez, Lautenberg and Kenney introduced S. 201, the *9/11 Heroes Health Improvement Act of 2007*. On April 16, 2007, Senator Menendez also introduced S.1119, James Zadroga Act of 2007 which models the Victims Compensation Act component of the Maloney-Nadler-Fossella 9/11 Health and Compensation Act.

#### **D. Cost Estimates**

It is difficult to estimate with certainty the long-term costs for health issues/care related to exposure to the toxins of 9/11. Since the current treatment program started only in late fall 2006, and was not yet at full participation, we continue to get better cost data. In addition, experts do not know enough about who may eventually need treatment and for what conditions. Of particular concern is the unknown cost of treating any late-emerging conditions like cancers.

To date, the best cost estimate we have available is a FY2008 Cost Estimates for the World Trade Center (WTC) Responder Medical Monitoring and Treatment Program dated October 15, 2007. See chart below.

Data for the estimate was provided by the Grantees (health providers) based on experience to that date. NIOSH found that the *current* programs cost about \$218 million annually. An earlier estimate dated June 15 2007 also noted that it is *probable* that costs will increase to \$428 million in the next two years. In addition, that estimate said it was *possible* that costs could rise to as much as \$712 million per year in the next two years. The June 15 estimate can also be found on p.33 of NIOSH's internal planning document:  
[http://maloney.house.gov/documents/911recovery/20070615\\_WTC\\_Medical\\_Monitoring\\_and\\_Treatment\\_Program.pdf](http://maloney.house.gov/documents/911recovery/20070615_WTC_Medical_Monitoring_and_Treatment_Program.pdf). Also see coverage in *New York Times* (July 18, 2007, "Big Cost Increase Is Predicted to Treat Ground Zero Workers").

The Congressional Budget Office is currently working on a funding estimate for the 9/11 Health and Compensation Act.

##### *i. FY2008 Cost Estimates for the World Trade Center (WTC) Responder Medical Monitoring and Treatment Program (October 15, 2007)*

The funding estimates outlined in this document and the attached tables are based on the most recent cost estimates from the WTC medical monitoring and treatment program including the current average treatment costs from the Centers of Excellence. The total estimated program cost for FY2008 is \$218,452,831. These cost estimates reflect the current experience and may change in the future depending on the number of patients being treated, the types of treatment required, and other factors.

Table 1 summarizes the status of FDNY Monitoring and Treatment Program, WTC Medical Monitoring and Treatment Program at Mt. Sinai (“Consortium”), and the cohort of responders who live outside the New York metropolitan area. With the exception of the FDNY program which accounted for most of its enrollees during rescue, recovery, and clean-up work, the number of new enrollees continues to increase as people who originally showed no signs of illness start to become sick and as awareness of the programs spread. The Consortium is the largest medical and monitoring program with 30,000 first responders seeking assistance.

The medical monitoring program has been in place for four years. The monitoring cost estimates (Table 2) are based upon data from the last reporting quarter (April through June 2007). The cost for each monitoring exam reflects the estimated average cost (\$1100) per exam over the entire network and includes administrative costs associated with the monitoring program. The overall cost estimate is based on the number of people currently registered in the program plus the expected increase in new registrations over the next year (500 per month based on average new registrations over the last several months). The estimate also assumes a higher rate of examinations for the fire fighters (90%) than for those being monitored at the other centers (who will only gradually be phased into an annual examination schedule). This results in an estimate of \$37,457,310 for the monitoring program for FY 2008.

The federally funded WTC health treatment program has only been in operation for about a year. The cost estimate for the treatment program (Table 2) is more complicated and is mainly based on the latest treatment cost data from April through June of this year. Based on actual cost data from that quarter, the average treatment cost for each patient in the program is \$8400 for one year. The cost estimate for FY2008 takes into account the rapid growth of the treatment program based on the experience in the last several months. It estimates that there will be 18,533 people in the treatment program at the midpoint of FY 2008. Taking into account the overlap in enrollment between the physical health and mental health treatment programs (approximately 12%) and the estimated annual treatment cost per patient, this leads to an estimate of \$138,995,521 for outpatient treatment costs and an additional \$10,000,000 for hospitalization costs (based on expected complications of current health conditions).

Table 3 outlines overall program cost estimates for FY 2008, including, in addition to monitoring and treatment costs, the estimated costs for claims processing (for a new third party administrator), data management, administration, and other general costs. These sum to a total cost estimate for FY2008 of \$218,452,831. The program currently has \$59,442,807 in monitoring and treatment program funding that has not been expended and can be carried over to FY 2008 (Table 4). In addition, there has been \$50,000,000 appropriated in the FY2007 Supplemental Appropriations. This leaves a projected shortfall of \$109,010,024 for FY 2008. The pending House FY 2008 Labor-HHS funding measure has proposed \$50 million for this program, which if enacted will leave \$59 million in unfunded program costs.

#### **Table 1. Numbers of Responders**

<b>Cohort</b>	<b>Enrolled</b>	<b>Initial Exams</b>	<b>Follow-Up Exams</b>	<b>Physical Health Tx</b>	<b>Mental Health Tx</b>
FDNY	16,000	14,429	14,774	2,064	2,550
Mt Sinai Consortium	30,000	21,110	9,101	5,812	2,463
Outside NYC - Non-Federal	1,400	700	175	*70	*70
Outside NYC - Federal	1,600	1,331	0	?	?
<b>TOTAL</b>	<b>49,000</b>	<b>37,570</b>	<b>24,050</b>	<b>7,946</b>	<b>5,083</b>
				* Estimate	* Estimate

**Table 2. Funding for the Current Monitoring and Treatment Program**

Source of Funds	Allocations of Funds	Obligations to Date	Commitments for FY2008	Remaining Funds for Program Requirements
Monitoring (2004, total \$)	\$90,000,000	\$74,499,042	\$11,029,369	\$4,471,589
Centers (Clinic & Data)	\$82,540,000	\$70,885,866	\$11,029,369	\$624,765
CDC Indirect Costs (5%)	\$4,285,714	\$2,716,343	\$0	\$1,569,371
NIOSH Program Direction	\$3,174,286	\$896,833	\$0	\$2,277,453
Treatment (2006, total \$)	\$75,000,000	\$56,827,179	\$1,500,000	\$16,672,821
Centers (Clinic & Data)	\$58,200,000	\$44,411,327	\$0	\$13,788,673
EAPs for Mental Health *	\$4,500,000	\$3,000,000	\$1,500,000	\$0
ATSDR	\$9,000,000	\$9,000,000	\$0	\$0
NIOSH Program Direction	\$3,300,000	\$415,852	\$0	\$2,884,148
Iraq Supplement (2007)	\$50,000,000			\$50,000,000
<b>TOTAL</b>	<b>\$215,000,000</b>	<b>\$131,326,221</b>	<b>\$12,529,369</b>	<b>\$71,144,410</b>

\* Employee Assistance Programs through New York Police Organizations



**Table 3: WTC Responder Health Program Funding Needs for FY2008**

Amount	Item
\$37,457,310	Estimated Costs for Monitoring
\$148,995,521	Estimated Costs for Treatment
\$186,452,831	Subtotal – Direct Patient Services
\$3,000,000	a Health Care Claims Processing
\$2,000,000	a Member Services
\$1,000,000	a Health Care Network Coordination
\$10,000,000	b Coordinating Centers of Excellence for Data Management, Analysis
\$3,500,000	c Clinical Centers of Excellence
\$6,500,000	d Coordinating Clinical Center of Excellence
\$6,000,000	e Federal Program Direction & Coordination
\$32,000,000	Subtotal - Other Program Components
\$218,452,831	Total

## E. Federal Funding

To date, funding for the responder's health needs has come in four waves. An initial \$12 million for screening started the program in FY02, followed by \$90 million for monitoring which was appropriated in FY04. A FY06 \$75 million appropriation included the first money made available for treatment. Most recently, \$50 million was included in an FY07 supplemental spending measure. None of the funds used to monitor or treat those exposed to Ground Zero toxins and suffering from health effects have ever been initially proposed by the Administration, and in fact many of these funds were appropriated over the Administration's objections.

Most recently, the House passed the FY 2008 Departments of Labor, Health and Human Services and Education appropriations bill, which included \$50 million for federally-funded 9/11 health clinics. The Senate passed their version of the bill which currently includes \$55 million, and the bill has to make its way through a House-Senate conference process. The President has threatened to veto the bill.

A timeline for funding issues follows:

September 18, 2001	Public Law (P.L.) 107-38 provides for a \$20 billion appropriation for 9/11 disaster relief
January 12, 2002	P.L. 107-117 provides a \$12 million allocation (as part of the \$20 billion appropriation) to the Centers for Disease Control for "disease control, research and training for baseline screening for the emergency service personnel and rescue and recovery personnel."
February 20, 2003	P.L. 108-7 provides \$90 million to "administer baseline and follow-up screening and clinical examinations and long-term health monitoring and analysis for emergency service personnel and rescue and recovery personnel." Of the \$90 million, no less than \$25 million was required to be made for current and retired firefighters.
February 7, 2005	President Bush's FY2006 Budget proposes a rescission of \$125 million in 9/11 funding originally directed at providing workers' compensation benefits as a result of 9/11.
December 30, 2005	P.L. Law 109-148 restored the \$125 million rescission and appropriated \$50 million to pay for workers compensation claims and \$75 million for continued monitoring and, for the first time, federally-funded treatment.
February 5, 2007	President Bush's FY2008 Budget proposed \$25 million for "expenses to provide screening and treatment for first response

emergency services personnel related to the September 11, 2001, terrorist attacks on the World Trade Center"

May 24-25, 2007	The House and Senate passed the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, which included \$50 million to remain available until expended for health monitoring and treatment of rescue and recovery workers. The President signed the bill into Law.
July 20, 2007	The House passed the FY 2008 Departments of Labor, Health and Human Services and Education appropriations bill, which included \$50 million for federally-funded 9/11 health clinics. The House bill also included strong language requiring the Secretary of HHS to create a comprehensive, long-term plan monitor and treat all exposed to Ground Zero toxins, including residents and non-responders. The plan must also address compensation and liability issues.
October 23, 2007	The Senate passed their LHHS appropriations bill with \$55 million and language explaining that residents and other non-responders were also to be eligible. The President has threatened to veto the bill.
November 2, 2007	The Joint House and Senate Conference Committee approved \$52.5 million in the LHHS appropriations bill for federally funded medical monitoring and treatment for all those exposed to the toxins of September 11.
November 13, 2007	President Bush vetoed the LHHS appropriations bill including the \$52.5 million designated to health clinics for first responders, residents, students, and area workers exposed to the toxins of Ground Zero
November 15, 2007	The House failed to override the President's veto of the LHHS appropriations bill by a vote of 277 to 144.
December 17 -19, 2007	The House and Senate passed P.L. 110-161, Consolidated Appropriations Act for FY2008 (Omnibus bill) which included \$108 million to address the health needs of those exposed to the environmental hazards of September 11, 2001. \$56.6 million of the sum was issued as emergency spending while \$51.5 million was provided under the Labor, Health and Human Services Appropriations Bill covered in the Omnibus package. Bringing total federal FY2008 September 11, 2001 health funding to \$158 million including \$50 million allocated in the Emergency

Supplemental Appropriations Bill, President Bush signed the Consolidated Appropriations Act for FY2008 into law.

February 1, 2008

President Bush's FY2008 Budget proposed \$25 million for September 11 health programs cutting federal funding 77 % from FY2008. The National Institute for Occupational Safety and Health (NIOSH) estimated that the existing programs would need more than \$200 million to cover their operating costs for 2009.

## **IV. 9/11 Compensation Issues**

### **A. September 11 Victim Compensation Fund (VCF)**

In the immediate aftermath of the September 11<sup>th</sup> terrorist attacks, Congress created the Victims Compensation Fund (VCF), a federal program to compensate victims of the September 11 attacks. The statute was introduced on September 21, 2001, as title IV of H.R. 2926, in the 107<sup>th</sup> Congress. The bill passed the House and Senate the same day, was signed by the President on September 22, 2001, and became Public Law 107-42. The fund provided aid to the families of 9/11 victims and to individuals who suffered personal injury. In return for accepting these funds, recipients relinquished rights to any future litigation. Specifically, a victim or (if he is deceased, his “personal representative”) may seek no-fault compensation from the program or may bring a tort action against an airline or any other party, but may not do both. The fund had a deadline for applicants of December 22, 2003.

At the deadline, close to 100% of the families who lost a loved one had filed with the fund, but many individuals who were injured as a direct result of 9/11 had not. After the filing, many of the injured were denied benefits, despite a clear need.

The main reasons for not filing applications included people who did not know they were eligible as well as others who were to become sick later. As discussed above, there are potentially thousands of individuals who are now just developing career-ending injuries – such as pulmonary and respiratory ailments – but are not eligible to receive assistance because they developed their symptoms after the deadline.

While there was some leeway, the rules required workers to have arrived at Ground Zero within 96 hours of the attack and would have needed to seek medical treatment within 72 hours. This is reasonable for rescue workers who suffered immediate injuries, but leaves no recourse for individuals with late-onset injuries or who arrived after September 15, 2001 to assist in the recovery effort and are now suffering from injuries. As noted above, new legislation would reopen the VCF to provide fair compensation for those people in need.

On April 1, 2008, the House Judiciary Subcommittees on the Constitution and Immigration held a joint hearing on the VCF entitled, “Paying with their Lives: The Status of Compensation for 9/11 Health Effects.”

Read hearing materials via the Judiciary Committee website:  
<http://judiciary.house.gov/oversight.aspx?ID=428>

Read volume 1 of the “Final Report of the Special Master of the Victims Compensation Fund of 2001”: [http://www.usdoj.gov/final\\_report.pdf](http://www.usdoj.gov/final_report.pdf)

Read volume 2 of the “Final Report of the Special Master of the Victims Compensation Fund of 2001”: [http://www.usdoj.gov/final\\_report\\_vol2.pdf](http://www.usdoj.gov/final_report_vol2.pdf)

## **B. Liability and the WTC Captive Insurance Company, Inc.**

The majority of rescue, recovery and clean up workers who labored in debris removal activities at the site of the World Trade Center did so under the direction of the City of New York and its contractors, who controlled all work at the site. It quickly became apparent at early stages of the debris removal efforts that no private insurer would take on the risks associated with the site.

In response, Congress passed legislation that would lead to the creation of the WTC Captive Insurance Company, Inc. Public Law 108-7 (117 Stat. 517) directed the Federal Emergency Management Agency (FEMA) "to provide, from funds appropriated to [it] for disaster relief for the terrorist attacks of September 11, 2001, in Public Law 107-117, up to \$1,000,000,000 to establish a captive insurance company or other appropriate insurance mechanism for claims arising from debris removal, which may include claims made by city employees." After the New York Legislature passed enabling legislation and the Insurance Department amended New York insurance law in 2003, the WTC Captive was formed by the City of New York and incorporated under Section 402 of the Not for Profit Corporation Law. Subsequently, on December 3, 2004, the WTC Captive was funded by FEMA and licensed by the New York State Insurance Department.

Since its formation, the WTC Captive has paid out many millions of dollars to defense attorneys fighting the Ground Zero workers in court, but has not paid a single claim by a worker made ill by his or her exposures to toxic substances at the WTC site. Media coverage and financial documents indicate that the WTC Captive has spent nearly \$75 million in salaries and benefits to those associated with the Captive, as well as overhead and fees to private law firms. Members of the New York Delegation, and Chairman Leahy and Ranking Member Specter of the Senate Judiciary Committee have raised concerns about these questionable uses of taxpayers' money when claims are not being paid. It has been alleged that the Captive is fighting each and every claim by each injured worker, regardless of its merit, refusing even to accept and analyze medical records and claim documents to properly value such claims.

Three sick 9/11 workers are suing the WTC Captive, alleging that the WTC Captive violated a congressional mandate to pay their injury claims and instead spent millions of dollars fighting those claims. The three workers—NYPD detective John Walcott, who has leukemia; another detective, Frank Maisano, who has lung disease; and Mary Bishop, a volunteer who has sarcoidosis and cancer—are also part of class action lawsuits of as many as 10,000 plaintiffs who are suing the City of New York and the contractors who oversaw the work at Ground Zero, among others. The lawyer representing these sick workers is David E. Worby. Reps. Nadler, Maloney, Hinchey, Ackerman and Clarke submitted an amicus brief to the Second Circuit Court of Appeals in re: World Trade Center Disaster Site Litigation expressing that Congress provided the billion dollar allocation of funds expressly because the City of New York faced liability for Ground Zero workers' injuries and stating their intent for the monies allocated and their concern about the WTC Captive's waste of those funds.

A variety of federal, state, and city officials are looking into various issue surrounding the Captive. One proposal that has been put forward would liquidate or partially liquidate the WTC Captive Insurance Company to pay for reopening the Victim Compensation Fund. At the same time the fund would be re-opened, Congress would eliminate the liability of the City and its contractors for claims arising out of the clean-up at the World Trade Center, by providing indemnity. Many questions remain about this approach, including whether or not such a new reopened VCF would be mandatory or voluntary, as it was originally created.

## **V. Appendix**

### **A. Government Accountability Office (GAO) Products on 9/11 Health\**

03/11/08 – September 11: Fiscal Year 2008 Cost Estimation Process for World Trade Center Health Programs

- Full GAO Testimony (pdf): <http://maloney.house.gov/documents/911recovery/20080311GAO08-537R.pdf>

01/22/08 - September 11: Improvements Still Needed in Availability of Health Screening and Monitoring Services for Responders outside the New York City Area

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d08429t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-08-429T&accno=A79971>

09/20/07 - September 11: Problems Remain in Planning for and Providing Health Screening and Monitoring Services for Responders

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d071253t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-07-1253T&accno=A76509>

09/18/07 - September 11: Improvements Needed in Availability of Health Screening and Monitoring Services for Responders

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d071228t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-07-1228T&accno=A76388>

09/10/07 - September 11: Improvements Needed in Availability of Health Screening and Monitoring Services for Responders

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d071229t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-07-1229T&accno=A75933>

07/24/07 - September 11: HHS Needs to Ensure Availability of Health Screening and Monitoring for all Responders

- Full GAO Report (pdf): <http://www.gao.gov/new.items/d07892.pdf>
- Summary prepared by the office of Rep. Maloney (pdf): [http://maloney.house.gov/documents/911recovery/20070724\\_SummaryofGAOReport.pdf](http://maloney.house.gov/documents/911recovery/20070724_SummaryofGAOReport.pdf)



09/08/06 - September 11: HHS Has Screened Additional Federal Responders for World Trade Center Health Effects, but Plans for Awarding Funds for Treatment Are Incomplete

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d061092t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-06-1092T&accno=A60492>

02/28/06 - September 11: Monitoring of World Trade Center Health Effects Has Progressed, but Program for Federal Responders Lags Behind

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d06481t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-06-481T&accno=A47937>

09/10/05 - September 11: Monitoring of World Trade Center Health Effects Has Progressed, but Not for Federal Responders

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d051020t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-05-1020T&accno=A36360>

09/08/04 - September 11: Health Effects in the Aftermath of the World Trade Center Attack

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d041068t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-04-1068T&accno=A12271>

09/08/04 - September 11: Federal Assistance for New York Workers' Compensation Costs

- Full GAO Testimony (pdf): <http://www.gao.gov/new.items/d041013t.pdf>
- Abstract: <http://www.gao.gov/docdblite/summary.php?rptno=GAO-04-1013T&accno=A12275>

## **B. Federal Hearings on 9/11 Health**

04/01/08 – House Judiciary Subcommittees on the Constitution and Immigration Joint Hearing on “Paying with their Lives: The Status of Compensation for 9/11 Health Effects”

- Hearing Materials via Judiciary Committee website:  
<http://judiciary.house.gov/oversight.aspx?ID=428>

03/12/08—House Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies Hearing on "World Trade Center 9/11 Health Monitoring and Treatment Program"

- Hearing Information via Appropriations Committee website:  
[http://appropriations.house.gov/Subcommittees/sub\\_lhhse.shtml](http://appropriations.house.gov/Subcommittees/sub_lhhse.shtml)

01/22/08 – House Oversight and Government Reform Subcommittee on Government Management, Organization and Procurement Hearing on “9/11 Health: Why did HHS Cancel Contracts to Manage Responder Health Care?”

- Hearing Materials via Oversight and Government Reform website:  
<http://governmentmanagement.oversight.house.gov/story.asp?ID=1687>

09/20/07 – House Homeland Security Full Committee Hearing on “Protecting the Protectors: Ensuring the Health and Safety of our First Responders in the Wake of Catastrophic Disasters”

- Hearing Materials via Homeland Security Committee website:  
<http://homeland.house.gov/hearings/index.asp?ID=87>

09/18/07 – House Energy and Commerce Subcommittee on Health Hearing on “Answering the Call: Medical Monitoring and Treatment of 9/11 Health Effects”

- Hearing Materials via Energy and Commerce Committee website:  
[http://energycommerce.house.gov/cmte\\_mtgs/110-he-hrg.091807.911effects.shtml](http://energycommerce.house.gov/cmte_mtgs/110-he-hrg.091807.911effects.shtml)

09/12/07 – House Education and Labor Full Committee Hearing on "Why Weren't 9/11 Recovery Workers Protected at the World Trade Center?"

- Hearing Materials via Education and Labor Committee website:  
<http://edworkforce.house.gov/hearings/fc091207.shtml>

09/10/07 – House Oversight and Government Reform Subcommittee on Government Management Field Hearing in Brooklyn on “9/11 Health Effects: The Screening and Monitoring of First Responders”

- Hearing Materials via Oversight and Government Reform Committee website:  
<http://governmentmanagement.oversight.house.gov/story.asp?ID=1477>

06/25/07 - Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Judiciary Committee oversight hearing on "the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001: Were There Substantive Due Process Violations?"

- Hearing Materials via Judiciary Committee website:  
<http://judiciary.house.gov/Oversight.aspx?ID=341>

06/20/07 - Subcommittee on Superfund and Environmental Health of the Senate Environment and Public Works Committee hearing on the "EPA's Response to 9-11 and Lessons Learned for Future Emergency Preparedness."

- Hearing Materials via Senate Environment and Public Works Committee website:  
[http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=2acd0554-802a-23ad-4488-6423daa414dc](http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=2acd0554-802a-23ad-4488-6423daa414dc)

04/23/07 – House Oversight and Government Reform Subcommittee on Government Management, Organization and Procurement holds 9/11 Health Effects Field Hearing in Brooklyn

- Hearing Materials via Oversight and Government Reform Committee website:  
<http://governmentmanagement.oversight.house.gov/story.asp?ID=1384>

03/21/07 - Senate Full Committee on Health, Education, Labor, and Pensions hearing on "the Long-Term Health Impacts from September 11: A Review of Treatment, Diagnosis, and Monitoring Efforts"

- Hearing Materials via the Senate Health, Education, Labor, and Pensions Committee website: [http://help.senate.gov/Hearings/2007\\_03\\_21/2007\\_03\\_21.html](http://help.senate.gov/Hearings/2007_03_21/2007_03_21.html)

02/28/07 – House Oversight and Government Reform Subcommittee on Government Management, Organization and Procurement Hearing on "9/11 Health Effects: Federal Monitoring and Treatment of Residents and Responders"

- Hearing Materials via GPO Access: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_house\\_hearings&docid=f:34912.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:34912.wais)

09/08/06 – House Government Reform Subcommittee on National Security Field Hearing in NYC on "9/11 Health of Responders and Residents "Progress Since September 11th: Protecting Public Health and Safety of the Responders and Residents"

- Hearing Materials via GPO Access: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_house\\_hearings&docid=f:36998.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:36998.wais)

02/28/06 – House Government Reform Subcommittee on National Security Hearing on "Progress Since 9/11: Protecting Public Health and Safety Against Terrorist Attacks"

- Hearing Materials via GPO Access: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_house\\_hearings&docid=f:28531.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:28531.wais)

09/08/04 – House Government Reform Subcommittee on National Security Hearing on “Assessing September 11th Health Effects”

- Hearing Materials via GPO Access: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_house\\_hearings&docid=f:98999.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:98999.wais)

10/28/03 – House Government Reform Subcommittee on National Security Hearing on “Assessing September 11th Health Effects: What Should Be Done?”

- Hearing Materials via GPO Access: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_house\\_hearings&docid=f:92728.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:92728.wais)

02/11/02 – Senate Committee on Environment and Public Works Subcommittee on Clean Air Field Hearing in NYC on "Air Quality in New York City After the September 11, 2001 Attacks"

- Hearing Materials via GPO Access - Part I: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_senate\\_hearings&docid=f:80397.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:80397.wais)
- Hearing Materials via GPO Access - Part II: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107\\_senate\\_hearings&docid=f:82894.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:82894.wais)